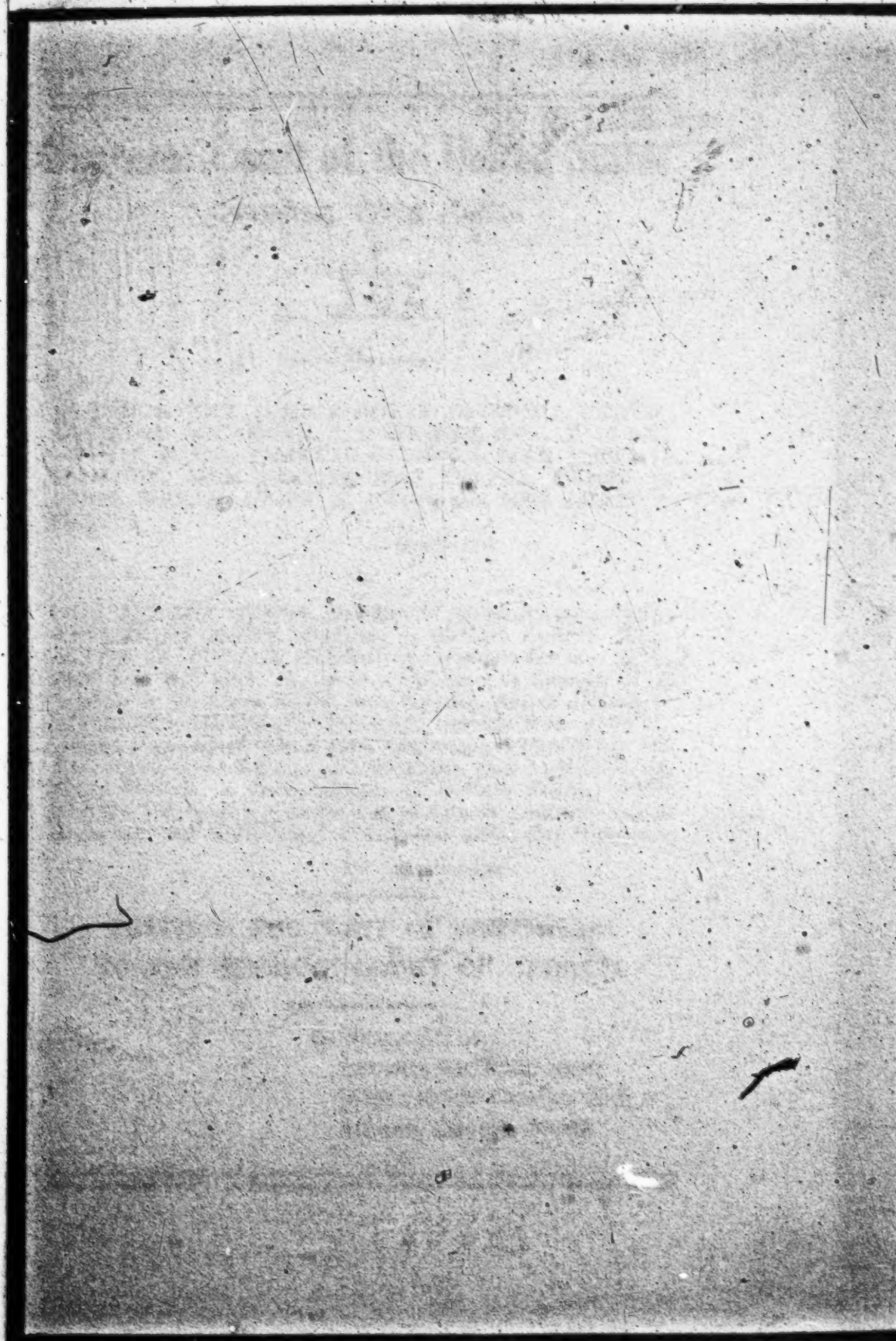

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SUPREME COURT, U. S.

No. 406

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

HUGH MILLER MERCER, et al.,
Appellants,

—against—

ARTHUR I. HEMMINGS, et al.,
Appellees.

HERMAN W. BEVIS, et al.,
Appellants,

—against—

MARK W. EASTLAND, et al.,
Appellees.

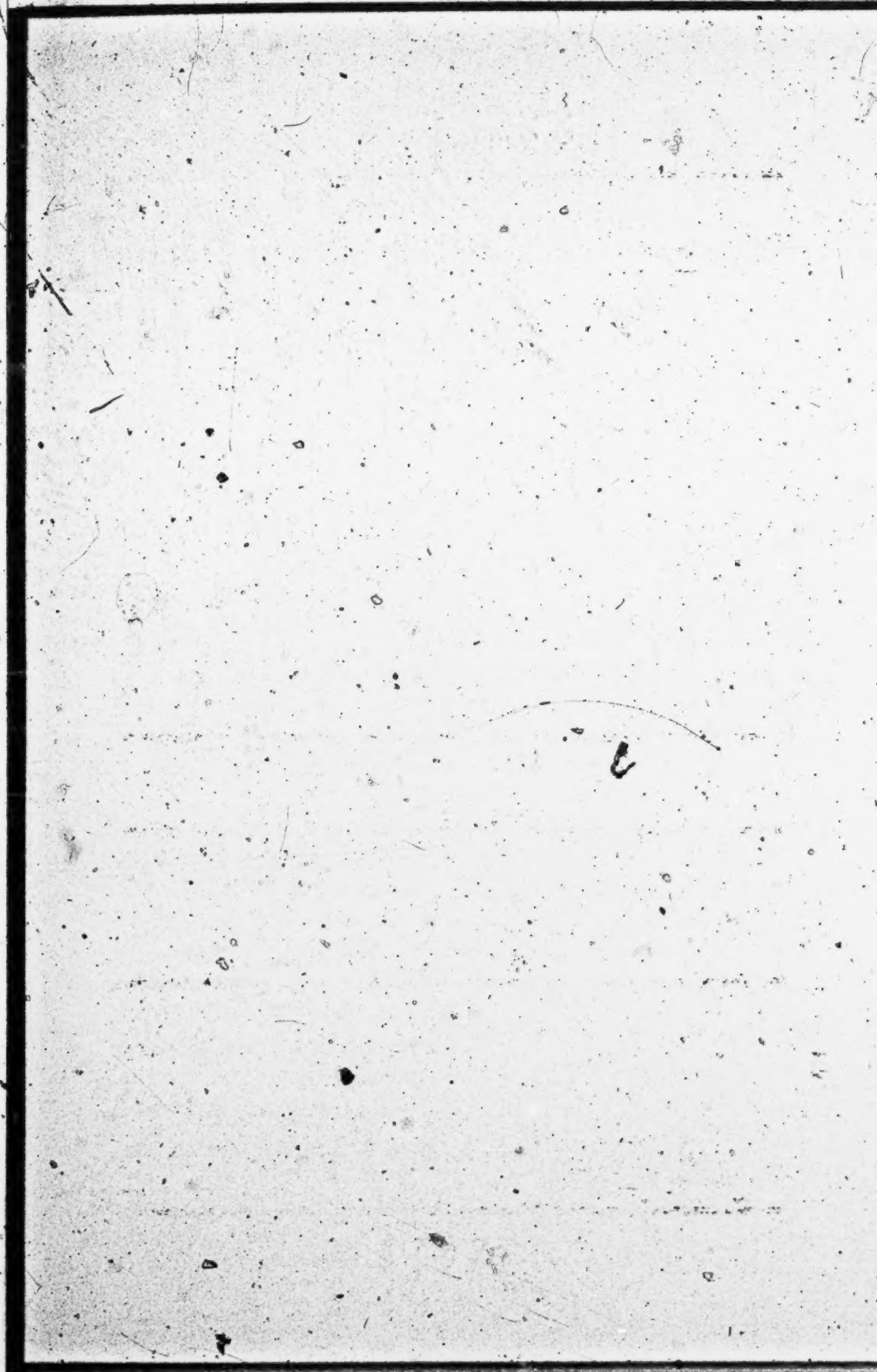
ON APPEAL FROM THE SUPREME COURT OF FLORIDA

MOTION OF HOWARD JOHNSON COMPANY FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE IN SUPPORT OF APPELLANTS' PETITION FOR REHEARING AND BRIEF, AMICUS CURIAE

JOHN T. NOONAN, *Attorney for Howard Johnson Company, Amicus Curiae*

294 Washington Street,
Boston, Massachusetts 02108

November 17, 1967.



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ON APPEAL FROM THE SUPREME COURT OF FLORIDA

MOTION OF HOWARD JOHNSON COMPANY FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE IN SUPPORT OF APPELLANTS' PETITION FOR REHEARING

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294 Washington Street
Boston, Massachusetts 02108

Howard Johnson Company hereby respectfully moves for leave to file a brief *amicus curiae* in support of appellants' petition for rehearing in this case. The consent of the attorneys for appellants has been obtained. The consent of the attorney for appellees has been requested but his consent had not been received at the time these papers went to press.

The interest of Howard Johnson Company is that it is a client of the independent public accounting firm of Price Waterhouse & Co., whose partners are appellants herein. The Company through its subsidiaries operates in many states, including Florida. The Company's Florida facilities form a substantial part of its overall operations. The Company believes it essential that its independent auditors have free and continuous access to corporate records in Florida so that they may be able to express an unqualified opinion on the Company's consolidated financial statements.

Howard Johnson Company makes this motion so that the Court may be fully informed, in considering appellants' petition for rehearing, of the interest of substantial multi-state concerns such as the Company in the maintenance of the highest possible standards in financial reporting, and of the Company's deep concern that the decisions of the Supreme Court of Florida may substantially impair the quality of such reporting.

Respectfully submitted,

JOHN T. NOONAN
Attorney for Howard Johnson Company

November 17, 1967

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ON APPEAL FROM THE SUPREME COURT OF FLORIDA

BRIEF OF HOWARD JOHNSON COMPANY, AMICUS CURIAE

This brief is submitted by Howard Johnson Company as *amicus curiae* in support of appellants' petition for rehearing of this Court's decision of October 23, 1967, granting appellees' motion to dismiss and dismissing the appeal for want of a substantial federal question.

Argument.

The Howard Johnson Company and its subsidiaries are engaged primarily in the operation and licensing of restaurants and motor lodges throughout the United States. A majority of the parent company's common stock is publicly owned and at present the Company has over 11,000 stockholders. The Company's consolidated gross revenues were in excess of $200,000,000 for the year 1966.

Subsidiaries of the Howard Johnson Company conduct substantial operations in the State of Florida. One of the most important subsidiaries is incorporated in the State of Florida and has its headquarters in Miami. At June 30, 1967, there were 86 Howard Johnson restaurants located in the State of Florida, of which 84 were operated directly while the remaining two were licensed operations. There were also 55 Howard Johnson's Motor Lodges in the State of Florida, of which 10 were directly operated while the remaining 45 were licensed operations. In addition to the above, various commissary facilities are located in Florida for supplying food and other items to both direct and licensed restaurant operations in that state and other states located in the southeast portion of the United States. As is readily apparent from the above, a substantial portion of the business of the Howard Johnson Company and its subsidiaries is conducted in the State of Florida, and a substantial portion of the Company's consolidated gross revenue is derived from those operations.

The Company has retained the Price Waterhouse firm for many years as its independent auditors. The Price Waterhouse firm has offices and facilities throughout the entire interstate area in which the Company has its principal operations. That firm is able through its various offices efficiently to conduct an overall audit of the entire corporate activities of the Company and its subsidiaries, wherever located. Such audit work culminates in an opinion

from the Price Waterhouse firm covering the financial results of operations of the entire Company. Management regards such an overall opinion by its auditors as essential not only for its own internal purposes but for presentation to stockholders and other investors and essential to comply with Federal securities laws.

The Company regards with great alarm any local regulation that would impair the ability of the Price Waterhouse firm to perform in Florida whatever work it may believe necessary to ensure audit results of the highest quality and to enable it to express an unqualified opinion with respect to the Company's financial statements. Such is the effect of the decisions of the Florida Supreme Court, which obviously make it impossible for the Price Waterhouse firm to maintain offices in Florida with qualified staff, facilities and records.

The decisions of the Florida Supreme Court seem to assume that the clients of Price Waterhouse would find it satisfactory for the firm to "purchase" the services of Florida accountants for use in the overall interstate audit. The Company would find it entirely unsatisfactory. The Florida Court's theory assumes an independent contractor relationship between two accounting firms, rather than the desired relationship in which Price Waterhouse as the firm performing the entire audit supervises and controls the nature, extent and quality of the work performed and thus can be held directly responsible for the entire work to the Company and its shareholders.

The Company is particularly concerned lest Price Waterhouse's inability to supervise and control the work would make it impossible for that firm to express an unqualified opinion as to the results of Florida operations. It would be entirely unsatisfactory for the Company to obtain an opinion from Price Waterhouse with respect to the Company's non-Florida operations and a separate opinion from

a Florida firm with respect to Florida operations. It is essential that the financial results of the Company's operations be presented and certified as an integrated whole.

Conclusion.

For the above reason, Howard Johnson Company respectfully requests that this Court grant rehearing, note probable jurisdiction, and assign the cases for oral argument.

Respectfully submitted,

JOHN T. NOONAN
Attorney for Howard Johnson Company

November 17, 1967